

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>RUTH ESPERANCE, Plaintiff, vs. THOMAS J. VILSACK, Secretary of Agriculture, U.S. Department of Agriculture, Defendant.</p>	<p>CIV. 20-5055-LLP PLAINTIFF'S SUPPLEMENTAL PETITION FOR ATTORNEY'S FEES, COSTS, AND EXPENSES</p>
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Plaintiff Ruth Esperance, by and through undersigned counsel, respectfully submits this motion for leave to supplement her Petition for Attorney's Fees, Costs, and Expenses (Dkt. 124 and 125). As of October 24, 2023, Plaintiff was seeking a total award of \$437,633.69, consisting of attorney's fees in the amount of \$399,918.45 plus \$12,377.14 for Plaintiff's costs and expenses, and \$25,338.10 for applicable sales tax.

Due to a mathematical error, there is a correction to be made to the September 3, 2023, disbursement for printing in the amount of \$304.30 as stated in Solomon Law Firm's invoice at Dkt. 125-1 pg 72. The actual amount paid was \$152.15, and thus Plaintiff is seeking to reduce the total award for costs (as of October 24, 2023; see Dkt. 124 and 125) to \$12,224.99. The total request for attorney's fees, costs, and expenses as of October 24, 2023 would be reduced from \$437,633.69 (see Dkt. 124) to **\$437,481.54**.

In addition, since October 24, 2023, Defendant filed a Motion for Judgment as a Matter of Law and Motion for New Trial or Remittitur (Dkt. 122 and 123). Plaintiff was compelled to respond to this pleading, and as a result, Plaintiff has incurred additional attorney fees.

Specifically, Solomon Law Firm, PLLC expended 65.8 hours of time totaling an additional \$47,178.60 in attorney fees, and Goodsell + Oviatt expended 16.84 hours of time totaling an additional \$3,702.75. An updated invoice itemizing the attorney fees billed by Solomon Law Firm, PLLC is attached hereto as Exhibit A to the Declaration of Daniel Gebhardt in Support of this Supplemental Petition for Attorney's Fees, Costs, and Expenses ("Exhibit A"). An updated invoice for Goodsell + Oviatt is being attached as Exhibit B. The total additional attorney fees being sought (in addition to those requested in Plaintiff's original petition (Dkt. 124 and 125)) are **\$50,881.35**.

Solomon Law Firm has also paid witness fees in the amount of \$1,020.86, printing in the amount of \$4.62, and postage in the amount of \$4.41 (see Exhibit A); and Plaintiff paid \$1,650.35 out-of-pocket to obtain copies of the trial transcripts to be used in her opposition of Defendant's post-trial motion (see Bill of Costs Exhibit 3), for a total of \$2,680.24. Goodsell + Oviatt paid a fee to the Custer County Sheriff for attempted service of a subpoena to Mark Van Every in the amount of \$52.58, additional fees for printing totaling \$164.00, and a long-distance call fee of \$3.00, for a total of \$219.58. Thus, Plaintiff is seeking **\$2,899.82** in additional expenses.

With **\$50,881.35** in additional attorney fees, **\$2,899.82** in additional expenses, and **\$3,228.61** in additional sales tax (see Exhibit A, supporting Declaration of Daniel Gebhardt), Plaintiff is seeking a total supplemental award to Plaintiff in the amount of **\$57,009.78**.

This amount should be added to the attorney fees, costs, and expenses already requested by Plaintiff (see Dkt. 124 and 125), except that due to a mathematical error, the prior total award requested by Plaintiff should be reduced from \$437,633.69 (see Dkt. 124) to **\$437,481.54**, as explained in the second paragraph above. Thus, the total award to Plaintiff for attorney fees, costs, and expenses, including sales tax, should be **\$494,491.32** (\$437,481.54 from the original fee

petition, as modified, plus \$57,009.78 in additional fees, costs, and expenses, including sales tax, which is being sought in this supplemental petition).

In addition to the supplemental fees, costs and disbursements set forth above, Plaintiff is submitting a Bill of Costs. The costs being presented in the Bill of Costs were already revealed to the Court and Defendant in Plaintiff's fee petition,¹ with the exception of those expenses incurred after October 24, 2023 (payment of witness fees, printing, and obtaining trial transcripts). Plaintiff paid a fee of \$880.40 to fly witness Eric Scott from Iowa to Rapid City, South Dakota. This cost is reflected on the Bill of Costs under "Other costs," as it may be taxable by the Clerk, as set forth in the Bill of Costs Guide found on this Court's website dated June 17, 2019, and in accordance with 28 U.S.C. § 1821 (c)(1).

CONCLUSION

WHEREFORE, for the reasons explained above, the additional attorney's fees totaling **\$50,881.35**, together with **\$2,899.82** for Plaintiff's additional costs and expenses, and **\$3,228.61** for sales tax, an additional **\$57,009.78** should be awarded to Plaintiff. Taken together with the reasonable attorney's fees, costs and expenses previously requested as of October 24, 2023, as modified to **\$437,481.54** (as explained in the second paragraph above), the total award to Plaintiff for attorney's fees, costs, and expenses, including sales tax, should be **\$494,491.32**. Plaintiff hereby seeks **\$494,491.32** in total for the attorney's fees, costs, and expenses, including sales tax, for this case.

¹ Plaintiff paid Mary Reedy a witness fee and mileage; however, because she was not called to testify, Plaintiff has not included this expense on the Bill of Costs.

Dated this 30th day of August, 2024

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